

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:07CR339
)	
v.)	
)	ORDER
LAWRENCE RAY COOK,)	
)	
Defendant.)	
)	

This matter is before the court on the defendant's motion to vacate under [28 U.S.C. § 2255](#), Filing No. [129](#), and motion for new trial based on newly discovered evidence, Filing No. [130](#). The court will consider the motion for new trial as included within the defendant's § 2255 motion. Under Rule 4 of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court must perform an initial review of the defendant's § 2255 motion. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 4(b) (2011 Ed.). The rules provide that unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant was found guilty to a violation of [18 U.S.C. §§ 922\(g\)\(1\)](#) and 924(e) for convicted felon in possession of a firearm. Filing No. [82](#). The defendant was sentenced to 204 months of imprisonment. Filing No. [102](#). The defendant's sentence was affirmed on appeal by the United States Court of Appeals for the Eighth Circuit. Filing No. [121](#). In his § 2255 motion, the defendant alleges that the indictment was defective, inadmissible evidence was used to convict, and ineffective assistance of counsel. Filing

No. [129](#). He alleges he received ineffective assistance of counsel for failure to properly communicate with the defendant, file motions, and object to erroneous oral jury instructions. *Id.*

On initial review, the court finds that it does not plainly appear that the defendant is entitled to no relief, and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. *See Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 8(a) (2011 Ed.).

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's § 2255 motion, Filing No. [129](#), and motion for new trial based on newly discovered evidence, Filing No. [130](#), within 21 days of the date of this order.

DATED this 21st day of June, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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